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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/080,994	02/20/2002	Akira Tsukihashi		1310

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EXAMINER	
BATTAGLIA, MICHAEL V	
ART UNIT	**PAPER NUMBER**
2627	

DATE MAILED: 05/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	**Application No.** 10/080,994	**Applicant(s)** TSUKIHASHI ET AL.	
	Examiner Michael V. Battaglia	**Art Unit** 2627	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 19 April 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☐ The period for reply expires _____months from the mailing date of the final rejection.
   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): 35 U.S.C. 112, first paragraph, rejections of claims 3-11 and 23.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: *3-11 and 23*.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____.

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments filed April 19, 2005 with respect to prior art rejections of claims 3-11 and 23 have been fully considered but they are not persuasive. Applicant argues that Salmonsen et al (hereafter Salmonsen) (US 6,636,468) in combination with Yen et al (hereafter Yen) (US 6,643,233) does not show or suggest the claimed feature of "interrupting the recording of the recording signal onto the disk when it is determined that the recording position reaches the changeable position." However, Salmonsen discloses interrupting the recording of the recording signal onto the disk when it is determined that the recording position reaches a determined position ("programmed stopping position" of Col. 4, line 9) and interrupting the recording of the recording signal onto the disk when it is determined that the recording position reaches the determined position (Fig. 4, element 440; Col. 4, lines 8-18; and Col. 6, lines 66-67). While Salmonsen does not individually disclose that the determined position is a changeable position, Yen provides the motivation for the determined position to be a changeable position (see final rejection of claims 3 and 23 in the Final Rejection mailed March 6, 2006). The motivation is for the linear speed of Salmonsen, in addition to the writing laser power of Salmonsen, to be set to a level better suited to the recording properties at the determined position of Salmonsen (see Col. 2, lines 2-16 of Yen and note that Salmonsen, the base reference, adjusts the writing laser power according to the recording properties). Because the combination of Salmonsen in view of Yen changes the linear speed of Salmonsen at the detected position of Salmonsen, the detected position of Salmonsen is a "changeable position." Thus the claimed "changeable position" reads on the determined position of Salmonsen in view of Yen.

In addition, on page 8 of Applicant's Remarks received April 19, 2005, Applicant attempts to distinguish Applicant's claimed invention from that of Yen individually. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See In re Keller, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); In re Merck & Co., 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). It is noted that both of the features of Applicant's claimed invention (i.e. (i) detecting recording properties based on a signal reproduced at a speed before the rotation speed is changed and (ii) reproducing data recorded immediately before the recording of the recording signal onto the disk is interrupted and detecting the recording properties based on the reproduced signal) described by Applicant as being different from the invention of Yen individually are disclosed by Salmonsen, which is the base reference in the combination of Salmonsen in view of Yen (see final rejection of claims 3 and 23 in the Final Rejection mailed March 6, 2006).

THANG V. TRAN
PRIMARY EXAMINER